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Unheard and Misinterpreted - A Comparative Legal Analysis into the obstacles women face under the pretext of Child Marriage

Muskan Surana^a

^aUniversity of Birmingham, England, United Kingdom

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Legal reforms towards women have been a growing area of discussion and debate. As the issues become more persistent, so does the need for legal enforcement. This article focuses on a sensitive yet pressing area for legal enforcement: child marriages. Due to numerous influences on this field of law; namely socio-economic, political, and religious factors, the extent of enforcement becomes limited despite the existence of law catered specifically for this issue. This article engages in a comparative study of the legal treatment of child marriages in two such complex jurisdictions - India and England. While they share similar legal histories, the laws of both countries have evolved differently, thus impacting the current situation of child marriages. This article analyzes the development of laws pertaining to child marriages. The effect of continuing socio-legal factors impacts legal pluralism as it exists today, thus limiting the enforcement of what the law hoped to achieve.

Keywords: *child marriage, socio-legal, jurisdiction, India, England.*

INTRODUCTION

Every year, more than two million girls are married before their 15th birthday worldwide.¹ Despite the numerous international agreements in place such as the Convention on the Rights of a Child (CRC) and Convention on the Elimination of Discrimination against Women (CEDAW), it is relatively common for citizens of ratifying member states to be in violation of it.² Surprisingly, this issue is prevalent in both economically developing and developed countries.³ England and India, the countries under review in this essay, face problems of child marriage. Both countries share an age-old history.⁴ They also share the incidences of child marriage as a persisting issue, albeit in different contexts. This comparative micro-analysis on child marriage uses a socio-legal approach to investigate the barriers encountered by both India and the UK in the legal treatment of child marriage, despite their domestic legislation. This essay examines child marriage in five sections: a) its history, b) laws as they exist today, c) legal pluralism on the extent of legal implementation, d) socio-legal factors acting as a hindrance to the enforcement and treatment of law and e) possible methods of reforms. Werner Menski suggests that the scope of comparative law is far wider than what the Eurocentric approach enforces.⁵ This doctrine of law has evolved beyond Europe to recognize areas of domestic law that are heavily embedded in culture and are applied pluralistically.⁶ This essay bases its arguments on Menski's developed interpretation of comparative law. It is argued that the sensitive law surrounding child marriage, is not solely a reflection of positivist state law in a jurisdiction but engages a plurality of voices and socio-cultural values. An area

¹ 'Covid-19 Places Half a Million More Girls At Risk' (*Save the Children*)

<<https://www.savethechildren.org.uk/news/media-centre/press-releases/covid-19-places-half-a-million-more-girls-at-risk-of-child-marri0>> accessed 04 January 2022

² Megan Arthur/Alison Earle, 'Child Marriages Around the World: Minimum Marriage Age, Legal Exceptions, and Gender Disparities' (2018) 39 (1) *Journal of Women, Politics & Policy*, 54

³ Hannah Summers, 'Child Marriage Thriving in UK due to Legal Loophole' (*The Guardian*, 4 May 2021)

<<https://www.theguardian.com/global-development/2021/may/04/child-marriage-thriving-in-uk-due-to-legal-loophole-warn-rights-groups>> accessed 04 January 2022

⁴ Kanika Sharma, 'Kanika Sharma: Restitution of Conjugal Rights' (*Law & History Review*)

<<https://lawandhistoryreview.org/article/kanika-sharma-restitution-of-conjugal-rights-a-pernicious-legal-transplant/>> accessed 27 December 2021

⁵ Reza Banakar, 'Power Culture and Method in Comparative Law' (*Cambridge University Press*, 22 June 2009)

<<https://www.cambridge.org/core/journals/international-journal-of-law-in-context/article/abs/power-culture-and-method-in-comparative-law/90D51D9AE3E974C146899610DCAA814E>> accessed 27 December 2021

⁶ *Ibid*

of law so subjective to its surroundings requires a series of negotiations at different levels, at all times.

INDIA

- *History of Child Marriage: A Failed Legal Transplant*

Legal transplant is the practice of introducing a foreign concept or rule in domestic law.⁷ This was commonly seen as an effect of colonialism, where laws were exactly taken from one jurisdiction and applied in another without regard to context.⁸ Child marriage in India dates to when it was under British colonial rule.⁹ The Census Report of 1921, which reflected an increase of child brides, caused a wave of public movement.¹⁰ Influential people from various religious communities joined as the awareness of the detrimental effects of child marriage began to spread.¹¹ In 1927, Rai Saheb Harbilas Sarda proposed a Bill to restrain the solemnization of child marriage, rendering them invalid.¹² Although it was initially intended only for Hindus, it soon extended to all religions alike and transformed into a penal statute.¹³

The Bill received criticism from both Indians and the ruling British and required a series of negotiations.¹⁴ Orthodox Hindus and Muslims called this an interference with religious laws, as marriage was perceived as a sacrament above any adjudicative authority.¹⁵ Regardless, most politicians were in favor of this reform, calling it a social change needed to protect young girls from adverse physical and mental impacts. The Sarda Act became the first piece of legislation uniform for all religions, promoted by all religious groups.¹⁶ It was a plurality of voices, therefore, that sparked a wave of legal reform within the country. The British, although

⁷ Margit Cohn, 'Legal Transplant Chronicles: The Evolution of Unreasonableness and Proportionality Review of the Administration in the United Kingdom' (2010) 58 (3) American Journal of Comparative Law, 591

⁸ *Ibid*, 592

⁹ Jean-Louis Halperin, 'Western Legal Transplants and India' (2010) 2 (1) Jindal Global Law Review, 14

¹⁰ Tahir Mahmood, 'Marriage-Age in India and Abroad: A Comparative Conspectus' (1980) 22 (1) Journal of Indian Law Institute, 40

¹¹ Mahmood (n 10) 42

¹² *Ibid*

¹³ *Ibid*

¹⁴ *Ibid*, 44

¹⁵ *Ibid*

¹⁶ *Ibid*, 46

had given more power to Indians through the 1919 Government Act yet retained ultimate control over the country.¹⁷ Thus, their consent to the proposed Bill became equally necessary. However, the British did not want to get involved, in fear of social unrest among Indians.¹⁸ With social development, Indians' political rights would strengthen, which consequently would weaken British rule.¹⁹ The British Empire would not have consented, had they not been pressured by England as well.²⁰ While India was dealing with issues of child brides, England saw an increase in prostitution, another threat to women.²¹ British involvement in creating legislation became a means to protect young girls from sexual assault in England rather than to protect child brides in India.²² Regardless, the legislation would prevail everywhere under their rule. The British regime not only wanted to bring social development to England but wanted to retain control in India as well.²³ In order to do so, they introduced the Child Marriage Restraint Act 1929 in the same year they enacted the Age of Marriage Act in England. The British Empire, however, could not legally impose their proposed minimum age of sixteen for marriage against the resistance by Indian reformists. Although this was an example of a failed legal transplant, the British diplomatically compromised on the Sarda Act. The Bill passed by the British although abided by the definition of a 'child' proposed by Indians as 18 for women and 21 for men, only imposed fines on contracting parties rather than nullifying the marriage. The issue of child marriage persisted, but the British had retained their dominance on this subject in India.

- *The Law as It Exists Today*

Following several amendments to enhance efficiency, the Prohibition of Child Marriage Act 2006 is the current legislation applicable to child marriages in India.²⁴ The definition of the

¹⁷ Sumita Mukherjee, 'Using Legislative Assembly for Social Reform: The Sarda Act of 1929' (2006) 26 (3) South Asia Research, 222

¹⁸ *Ibid*

¹⁹ Mukherjee (n 17) 223

²⁰ Varsha Chitnis & Danaya Wright, 'The Legacy of Colonialism: Law and Women's Rights in India' (2007) 64 Wash. & Lee. Review, 1326

²¹ *Ibid*

²² *Ibid*, 1327

²³ *Ibid*, 1330

²⁴ Prohibition of Child Marriage Act, 2006, s 2

child remains the same as in the previous enactments, however, the penalty charges have changed. Section 3 allows for every child marriage, whether solemnized before or after the enforcement of this Act, to be voidable when brought to court by one of the contracting parties.²⁵ This comparative analysis examines the legal treatment of child marriage from this point onwards. While the rate of child marriages in India has declined since, it remains high in numbers, specifically in rural India – which accounts for 65% of the population.²⁶ Another complexity to this investigation is the North-South divide within India.²⁷ The issue is relatively more prevalent in Northern states than in the South. Reasons behind unlevelled rates of development across the country are multifold, as with multiple legal orders.

- *The Impact of Legal Pluralism on the Efficiency of the Law*

Legal pluralism is an inclusive methodology of various legal orders.²⁸ Where not only state law, but social practices and customary law are also considered legally valid.²⁹ This approach was opposed by several scholars as the distinction between norms and law can become obscure and problematic.³⁰ However, the examination of any legal treatment is incomplete without considering co-existing legal orders;³¹ especially when it concerns an area of law as subjective as family law. Considering the diverse complexities involved in India, legal pluralism exists in three aspects. The first is religious-based legislation.³² This is an example of weak legal pluralism as legislation is recognized and enacted by the state.³³ The Hindu Marriage Act 1955, for instance, amended the age of marriage to 18 and 21 yet refused to nullify marriages.³⁴ After 2006 however, when the state faced a clash against Hindu law, the

²⁵ Prohibition of Child Marriage Act, 2006, s 3

²⁶ 'India – Rural Population' (*Trading Economics*) <<https://tradingeconomics.com/india/rural-population-percent-of-total-population-wb-data.html>> accessed 03 January 2022

²⁷ Lotus McDougal, Holly Shakya et. al., 'Mapping the Patchwork: Exploring the subnational heterogeneity of child marriage in India' (2020) 12 (1) SSM – Population Health, 4

²⁸ William Twining, 'Normative and Legal Pluralism' (2010) 20 (3) *Duke Journal of Comparative and International Law*, 474

²⁹ *Ibid*

³⁰ William Twining (n 28) 481

³¹ *Ibid*

³² B Suresh Lal, 'Child Marriage in India' (2015) 4 (1) *International Journal of Science and Research*, 2994

³³ William Twining (n 28) 488

³⁴ B Suresh Lal (n 34)

government decided to uniformize.³⁵ Since the Prohibition of Child Marriage Act 2006 applied to all Indians alike, it was considered superior to the Hindu Marriage Act.³⁶ Those in favor interpreted Hindu law as not backward but as one evolving in a post-modern phase that incorporated state law.³⁷ Under this view, neither does the Hindu law violate the age threshold mandated by the state, nor does it diverge from its other practices and beliefs of conducting child marriages. When the state does not recognize various forms of laws through legislation, it may allow the co-existence of different legal orders without retaining complete control over them, as seen with Islamic 'Sharia' law.³⁸ The main ground for contention between domestic law and Sharia law is the distinction between protecting religious minorities and protecting the rights of the individual.³⁹ It is often perceived that women are oppressed under Sharia law. However, the situation seems different with the establishment of DarulQaza; or Sharia courts in India. These religious institutions are prevalent in cities and states of high-density Muslims.⁴⁰ These religious institutions commonly hear cases of family law - particularly marriage and divorce. Contrary to the popular belief, Muslim women are more empowered to share details of their intimate life in an informal setting as the DarulQaza than petitioning in courts.⁴¹ Sharia courts can provide counseling as well as dispute resolution without the need for official legal documents and procedures.⁴² Regardless of whether claimants approach the DarulQaza or not, they have the right to recourse to judicial courts.⁴³ Due to a long-age history of Hindu and Muslim co-habitation in India, judicial compliance between the two religions and state law is relatively easy, thus the implementation of state enactments is better reached than in the case of tribe-based communities.

³⁵ Domenico Francavilla, 'Interacting Legal Orders and Child Marriages in India' (2011) 19 (2) *Journal of Gender, Social Policy & Law*, 544

³⁶ *Ibid*

³⁷ *Ibid*, 545

³⁸ Suchandra Ghosh & Anindita Chakrabarti, 'Religion-based Personal Law, Legal Pluralism and Secularity: A Field View of Adjudication under Muslim Personal Law in India' (2021) 10 (2) *Oxford Journal of Law and Religion*, 254-274

³⁹ *Ibid*

⁴⁰ *Ibid*

⁴¹ *Ibid*

⁴² *Ibid*

⁴³ *Ibid*

Tribal communities, also categorized as ‘Scheduled Tribes’ have a separate section of laws as per the Indian Constitution under Part X.⁴⁴ While the 2006 Act applies to all tribes as well, they are still governed by their customs, under the authority of village ‘panchayats’. Lack of state sovereignty in a geographical area is an adverse effect of legal pluralism, as evident here. Laws are harder to implement if there stand various socio-legal barriers.

- *Various Barriers to Prohibition of Child Marriage: A Complex Socio-legal Analysis*

A Socio-legal methodology includes an investigation into the methods of history, sociology, economics, and their relationship with the law.⁴⁵ The issue behind the limited efficiency of legal provisions is the deep-rooted matrix of cultural practices, religious traditions, and associated prejudices.⁴⁶ Other evolving factors affecting the rate of child marriages today are economic conditions, social development, and access to basic facilities.⁴⁷

- *Rural-Urban Divide*

A survey conducted in 2020 revealed geographical clusters of high levels of child marriage around state borders.⁴⁸ Examples include the western states of Rajasthan and Madhya Pradesh as well as the south-eastern division between Telangana and Andhra Pradesh.⁴⁹ Child marriages in these areas often take place between rural communities. More than religion, caste systems that are although legally abolished, yet continue to prevail within rural settings, play an important role in child marriage.⁵⁰ The cultural practice conceptualizes marriage as not only a union between two individuals but between two communities.⁵¹ Where legal accessibility remains limited, and the mentality of early marriage continues to dominate, it becomes easier to violate legal provisions. However, as the cultural practice of child marriages spread across

⁴⁴ *Ibid*

⁴⁵ Annelise Riles, *Comparative Law and Socio-legal Studies* (1st Edition, Oxford Handbook of Comparative Law 2006)

⁴⁶ B Suresh Lal (n 34) 2993

⁴⁷ *Ibid*

⁴⁸ Lotus McDougal (n 27) 4

⁴⁹ *Ibid*

⁵⁰ *Ibid*

⁵¹ Lotus McDougal (n 27) 8

borders among rural villages, so does the attempts by government initiatives at awareness.⁵² The same survey found factors indifferent to geographical locations. Access to various forms of media such as television and newspapers showed a relatively lower rate in marriages.⁵³ Moreover, if these preventive programming initiatives were targeted at one district, its neighboring districts showed a similar decline.⁵⁴ The level of influence is therefore strong, may it be orthodox cultural practices, or preventive measures for it.

- *Central vs State Government*

It is important to note that government initiatives are determined on a state basis. While the central government issues guidelines on spreading awareness, it is the responsibility of state governments to address the issue as per its severity.⁵⁵ It must be remembered that although child marriage is externally seen as a nationwide problem, it is not so much diffused in the majority of states. For example, the rates of child marriage are considerably higher in Rajasthan and Gujarat than it is in Kerala.⁵⁶ The fluctuating trends among states attributing various underlying factors also become a complexity in formulating national legislations.

- *Deep-Rooted Cultural Practices*

The notion of marriage expenditure; specifically, dowry, and its correlative increase with a girl's age is also a motivating factor for child marriage.⁵⁷ Parents of the bride consider dowry as a ritual for the bride's wellbeing and happiness.⁵⁸ Dowry became an issue when the groom's family started demanding dowry for their own benefit. At the patriarchal misuse of this cultural norm, dowry was made illegal through the Dowry Prohibition Act 1961.⁵⁹ It remains

⁵² *Ibid*, 4

⁵³ *Ibid*

⁵⁴ *Ibid*

⁵⁵ Pintu Paul, 'Child Marriage Among Girls in India: Prevalence, Trends and Socio-Economic Correlates' (2020) 14 (2) *Indian Journal of Human Development*, 305

⁵⁶ Pintu Paul (n 55) 306

⁵⁷ Jacqueline Mercier, 'Eliminating Child Marriage in India: A Backdoor Approach to Alleviating Human Rights Violations' (2006) 26 *Boston College Third World Law Journal*, 377

⁵⁸ *Ibid*, 382

⁵⁹ *Ibid*, 389

inefficient because an equal penalty is imposed on both contracting parties.⁶⁰ With this, neither the bride nor the groom's families are incentivized to report a case. Instead, rural communities believe the older a girl gets, the more dowry her family is obliged to give.⁶¹ To ensure a girl does not become a financial burden to her family, she is married off young out of convenience.

- *Lack of Employability*

Another reason why child marriage is considered a means of convenience is the lack of alternatives. Rural villages do not tend to provide incentives for girls to complete higher education in the form of employment opportunities.⁶² Biswajit Ghosh emphasizes this issue by focusing on the rural city of Malda in West Bengal where he finds many caste-following and backward communities; particularly Muslims, follow the practice of child marriage.⁶³ Despite families of sound economic conditions getting their girls educated, when employment opportunities remain restricted for women, they are bound to be groomed solely for marriage.⁶⁴

- *Regressive Social Mindsets*

Ultimately, it's the common patriarchal mindset that hinders the enforcement of the Prohibition of Child Marriage Act 2006 to its full potential. Child marriage is deeply entrenched in orthodox believers of religion which usually dominates when levels of social and economic development are relatively low.⁶⁵ Such was noted among Muslims in the Mewat district of Haryana.⁶⁶ Many young Muslim girls had little to no opinion on early marriage, only considering it a family obligation that needed to be fulfilled.⁶⁷ Another such obligation was to bear children. One of the interviewees, Sahuni, who received Qur'an-based education,

⁶⁰ *Ibid*, 390

⁶¹ *Ibid*, 382

⁶² Deepita Chakravarty, 'Lack of Economic Opportunities and Persistence of Child Marriage' (2018) 25 (2) Indian Journal of Gender Studies, 180

⁶³ Biswajit Ghosh, 'Child Marriage and its Prevention: Role of adolescent girls' (2011) 7 (1-2) Indian Journal of Development Research and Social Action, 52

⁶⁴ *Ibid*, 53

⁶⁵ Rajeev Seth, Vijayluxmi Bose et. al., 'Social Determinants of Child Marriage in Rural India' (2018) 18 (4) Oschner Journal, 391

⁶⁶ *Ibid*

⁶⁷ *Ibid*

had gotten married at the age of 15 and had suffered from eight miscarriages since.⁶⁸ The inherent obligation towards marriage under the pretext of saving one's family's honor is a result of a lack of education and social development. While a movement led by reformists such as Sarda led to the first piece of legislation against child marriage, enforcement of the same or its amendments is another thing. Legal pluralism enhances acceptability and the extent to which the law can potentially be implemented. However, socio-legal barriers play an important role in determining the level of implementation of the law.

ENGLAND

- *History of Child Marriage*

As mentioned earlier, England had brought reforms in domestic law for the protection of women in 1929. Prior to that, common and canon law (Roman Catholicism) had prevailed in England.⁶⁹ A person was considered of suitable age as soon as they attained puberty. The legal age for puberty was established as twelve for girls and fourteen for boys.⁷⁰ However, with rising rates of prostitution in the Victorian Era that put young women at vulnerability, raising the minimum age for marriage became a pressing need.⁷¹ Thus, in 1929, England passed the Age of Marriage Act. This had raised the minimum age of marriage to sixteen for both genders with required parental consent.⁷² This was later amended in 1949 in a stricter sense.

- *The Law as It Exists*

The 1949 Age of Marriage Act is the only legal provision related to child marriage.⁷³ Marriage under the age of sixteen is prohibited. However, according to Section 3 of the Act, people under the age of twenty-one can marry if they have parental consent.⁷⁴ What perhaps was not foreseen by the legislature is that this provision has become a legal loophole. Several NGOs

⁶⁸ *Ibid*

⁶⁹ 'Child Marriage in Early Modern England' (*Australian Women's History Network*, 3 January, 2018) <<http://www.auswhn.org.au/blog/child-marriage/>> accessed 03 January 2022

⁷⁰ *Ibid*

⁷¹ Varsha Chitnis & Danaya Wright (n 20) 1326

⁷² Age of Marriage Act, 1929, s 1

⁷³ Age of Marriage Act, 1949, s2

⁷⁴ Age of Marriage Act, 1949, s3(1)

focused on women's empowerment have been spreading awareness regarding this issue, while many have come out in protest for an amendment.⁷⁵ One such NGO based in England, Karma Nirvana, found over 360 cases of forced marriage involving girls under eighteen in 2019.⁷⁶ Protesters have accused the government of hypocrisy, for the country has constantly condemned developing nations for child marriages while they have turned a blind eye to their own situation.⁷⁷ The nationalities and religious beliefs of targeted child brides, misuse of parental consent, and lack of legal accountability are reasons for this issue. While the creation of legislation did not require so many negotiations, a plurality of moral values existent in the country today may have become a barrier to the proper implementation of the law.

- *Legal Pluralism and its Hindrances*

Although the English legal system asserts itself as a state centralist one with laws applicable to all, reality does not reflect the same, especially within the context of family law.⁷⁸ While they only apply weak legal pluralism within their jurisdiction, considering state-recognized laws as subordinate to the English legal system, it is important to note that most child brides in England are of South Asian origin and are common of the Muslim belief.⁷⁹ To better understand the severity of this issue as well as resolve it, scholars like Manea have often contended for the adoption of a stronger legal pluralistic approach where various forms of laws co-exist. It becomes difficult, however, when the resistance to pluralism is not one-sided. To re-assert their identity, Muslim communities began resisting English legal hegemony and instead tried enforcing their religious principles construed in Sharia law. With the belief that their laws were God's laws, they wanted to retain superiority and impose governance over domestic laws.⁸⁰ This, however, was not acceptable to the British legal system. To begin with,

⁷⁵ Emma Batha, 'Child Marriage Survivors Say UK Law Legitimizes Terrible Abuse' (*Reuters*, 23 October 2018) <<https://www.reuters.com/article/us-britain-childmarriage-law-idUSKCN1MX00N>> accessed 05 January 2022

⁷⁶Hannah Summers (n 3)

⁷⁷ Heather Barr, 'If You Don't Want Child Brides in Bangladesh, Don't Accept Them Here in Britain Either' (*Human Rights Watch*, 1 February 2017) <<https://www.hrw.org/news/2017/02/01/if-you-dont-want-child-brides-bangladesh-dont-accept-them-here-britain-either>> accessed 05 January 2022

⁷⁸ Ihsan Yilmaz, 'The Challenge of Post-Modern Legality and Muslim Legal Pluralism in England' (2002) 28 (2) *Journal of Ethnic and Migration Studies*, 343

⁷⁹ *Ibid*

⁸⁰ Ihsan Yilmaz (n 78) 346

both legal orders viewed marriage differently. While domestic law perceived marriage as a contract between two consenting individuals to become husband and wife, Sharia law, like Indian religious beliefs, considered marriage a sacrament that legalized intercourse and the procreation of children.⁸¹ Sharia law permitted marriages that were contracted orally as well, while such was not accepted in English law.⁸²

More importantly, the foundational principles of Sharia law seemed to be in violation of basic human rights principles enshrined in the Human Rights Act 1998, specifically towards women.⁸³ A report published by Civitas, a European Commission flagship program, in 2009 revealed that Muslim women were potentially forced to use Sharia councils and tribunals to seek means of resolving disputes in a marriage they had been pressured by their families in.⁸⁴ Another report in 2010 derived similar findings when they concluded that women were pressurized by their families to reconcile with their abusive husbands.⁸⁵ A BBC Panorama documented in 2013 reflected the same.⁸⁶ While Sharia councils have repeatedly negated all these accusations as baseless, initiatives taken by local NGOs over the years have purported similar evidence of patriarchal treatment against women.⁸⁷ Legal pluralism is difficult to promote when varying legal orders violate the very moral values enshrined in domestic legislation. The increasing number of Muslims in England, however, called for an attempt at legal pluralism for harmony within society. Lord Chief Justice Nicholas Philips and the Archbishop of Canterbury suggested creating a parallel legal order system as early as 2006 as per the British Arbitration Act 1996. Sharia councils could retain their establishment and aid family-related disputes through mediation and resolution with the consent of both parties. However, their decision would not be legally binding as Sharia councils are not considered part of the English court system. The English government does not intervene with Sharia

⁸¹ Ihsan Yilmaz (n 78) 348

⁸² *Ibid*

⁸³ Amin Al-Astewani, 'English Responses to Sharia Tribunals: A Critical Assessment of Populist Attitudes Toward Islamic Law' (2020) 14 (2) Critical Policy Studies, 193

⁸⁴ *Ibid*, 199

⁸⁵ *Ibid*

⁸⁶ *Ibid*

⁸⁷ *Ibid*, 200

principles as long as they do not violate an explicit provision of the law.⁸⁸ The tolerance towards a religion that contrasts nearly every aspect of domestic law is the English interpretation of incorporating legal pluralism.

- *Socio-Legal Barriers to Prevention of Child Marriage*

Legal Loopholes

Despite legal pluralism, child marriage remains unprotected. There exists a lack of legal provisions addressing this issue.⁸⁹ Instead, child marriage falls under the scope of forced marriage, which is defined by the Foreign and Commonwealth Office, as when 'one or both parties are coerced into marriage against their will and under duress.'⁹⁰ However, this definition neither emphasizes age, nor gender, nor as a result has limited efficiency in preventing child marriage.⁹¹ Forced marriages are not criminalized either.⁹² Only repercussions of forced marriages, such as kidnapping, harassment, or sexual assault are considered legal offenses under various criminal and civil provisions.⁹³ However, it cannot be presumed that child marriage always results in grievous consequences, therefore the issue is arguably ignored in legislation. An attempt at criminalizing forced marriages was made in 2005, only to nationwide opposition.⁹⁴ Opposers feared that if this legislation was enforced, families might force their children to marry in their home countries to avoid penalty and return to England as immigrants, a means commonly used in child marriages in England.⁹⁵ Families also coerce their girls into marriage with a boy of the same religious community residing in England with expectations of a better economic future.⁹⁶

⁸⁸ *Ibid*

⁸⁹ Khatidja Chantler, Geetanjali Gangoli, & M. Hester, 'Forced Marriage in the UK' (2009) 29 (4) *Critical Social Policy*, 587

⁹⁰ *Ibid*

⁹¹ *Ibid*, 590

⁹² Geetanjali Gangoli & Melanie McCarry, 'Child Marriage or Forced Marriage?' (2009) 23 *Children and Society*, 418

⁹³ Geetanjali Gangoli & Melanie McCarry (n 9) 419

⁹⁴ Geetanjali Gangoli, Khatidja Chantler, 'Protecting Victims of Forced Marriage: Is Age a Protective Factor' (2009) 17 (3) *Feminist Legal Studies*, 267

⁹⁵ *Ibid*, 278

⁹⁶ *Ibid*

- *Racial Minorities and their Cultural Values*

The creation of a specific criminal offense for child marriages would highlight minority communities as active abusers of the law and would be prejudiced against them without understanding the intricate social factors motivating families towards child marriage.⁹⁷ Other than encouraging economic factors, there are social and cultural factors that are relatively different from what exists in their home countries. GeetanjaliGangoli iterates the rise of child marriages to be a cause of diasporic influence and immigration rather than the adoption of social practices.⁹⁸ While rates of child marriages are steadily declining, as evident in India, the concept of a daughter saving a family's prestige and honor is still heavily emphasized in South Asian communities in England. 'Izzat' (honor) and 'Sharam' (shame) are two moral values instilled in young Muslim girls when they are pressurized for child marriage. Sexual purity and chastity are examples of 'izzat' and 'Sharam' which are constantly reiterated to deter western influence that supposedly 'corrupts' the minds of young girls.⁹⁹ These cultural persuasions are used for child marriage according to their parents' wishes as well as to live within an unwanted marriage. For even if they wanted to, Muslim women have no alternative recourse.

- *Impacts of Unregistered Marriages*

Firstly, English law does not recognize religious marriages.¹⁰⁰ A marriage must be registered as per the requirements of civil marriage in English law for any party to be able to petition the court. Intention alone is not sufficient to convert a non-qualifying marriage into one which is within the scope of the 1949 Act.¹⁰¹ From a survey conducted in 2017 among 901 respondents residing in various cities across England, 60% only had a religious marriage in the form of 'nikah', and within this group, 28% were aware of their lack of status.¹⁰² The rise in

⁹⁷ *Ibid*, 273

⁹⁸ *Ibid*, 281

⁹⁹ *Ibid*, 339

¹⁰⁰ Vishal Vora, 'The Continuing Muslim Marriage Conundrum: The Law of England and Wales on Religious Marriage and Non-Marriage in the United Kingdom' (2020) 40 (1) *Journal of Muslim Minority Affairs*, 148

¹⁰¹ *Ibid*, 149

¹⁰² *Ibid*, 151

unregistered marriages, mostly child marriages, did propel the English courts for a little leniency. As seen in the landmark *Akhter v Khan* cases, the courts were given the discretion to deem unregistered marriages as non-marriage, thus dissolving victimized women from their marital obligations.¹⁰³ Regardless, young girls are left vulnerable.

- *Lack of Social and Economic Independence*

With limited employment opportunities given to Muslims and the cultural notion of financial dependence on husbands, young women, even if divorced, are not granted any relief by the law. The law on immigration and welfare grants no recourse to public funds or any other aid such as housing, to divorced women.¹⁰⁴ Refuge protection against domestic violence is also only provisioned for adult victims above the age of 18. When the alternatives leave young women at greater vulnerability, they prefer to stay in the marriage. England has seen an influx in the number of cultures and religions over the past few decades. While it is contended that Muslim practices are a violation of domestic principles of human rights, the number of unregistered marriages and lack of proper legislation addressing this issue undermines the current situation in England.¹⁰⁵ There exists a plurality of voices and values; that often contradict one another, it requires a codified structure of rules to ensure the legal loopholes are not misused against the vulnerability of women.

CURRENT REFORM: INTERNATIONAL MOVEMENT

Socio-legal measures for reform such as education, employability, legal access, awareness, and accountability have been deduced by several scholars in their examination of child marriage. However, an analysis on the plurality of voices and values hindering impactful legal treatment is incomplete without incorporating the role of international law. As mentioned earlier, several international agreements promote the prohibition of underage marriage. These agreements have helped push for legal change in both countries. The ICCPR, for example, pointed out a

¹⁰³ *Ibid*, 150

¹⁰⁴ *Ibid*

¹⁰⁵ Vishal Vora (n 100) 160

violation in Indian laws by discriminating the age of marriage by gender.¹⁰⁶ Although attributed to various socio-political factors as well, reformists have appealed for amendment in the 2006 Bill to 21 as the minimum age for both genders.¹⁰⁷ Similar to the previous legislation, the amendment applies to all Indians. A similar wave of movement in England can be attributed to international legal agreements too. While the legal age of marriage as per CEDAW is 18, England, by allowing marriages under that age were in violation. When Bangladesh justified its violation of these conventions by lowering the age of marriage by using the UK as an example, many local reformist organizations came out in protest.¹⁰⁸ Following the public movement, the law has recently amended its minimum age of marriage to eighteen.

CONCLUSION

Werner Menski was correct in his perception of comparative law, that national laws are more than just codified acts of legislation. As seen in both India and England, the laws may share a similar origin and history, yet produce different outcomes depending on socio-legal barriers. While the rural-urban divide became a prominent cause for child marriages in India, tensions between religion and the state led to the misuse of law in England. Therefore, reforms can also only be suggested with consideration to these underlying factors. An analysis is incomplete without the matrix of socio-legal aspects that influence the creation and implementation of laws. An amendment in legislation is not a sufficient response to the issue of child marriage unless adverse socio-legal barriers are removed.

¹⁰⁶ Michael L Valan & M. Srinivasan, 'Child Marriage in India: A Critical Appraisal' (2017) 7 (1) IUP Law Review, 25

¹⁰⁷ Esha Roy, 'Bill to Raise Marriage Age Of Women Seeks to Override Laws Across Faith' (*Indian Express*, 22 December 2021) <<https://indianexpress.com/article/india/bill-to-increase-marriage-age-of-women-to-21-yrs-to-be-sent-to-house-panel-smriti-irani-7684161/>> accessed 06 January 2022

¹⁰⁸ *Ibid*